

unless and until the amount of a judgment held by the plaintiffs against one Benson, the appellants' assignor, had been contributed by or on behalf of Benson to the assets of the plaintiff company.

After setting out the facts, the learned Judge said that the appellants' first contention was, that the respondents had not given legal proof of facts establishing as against the appellants a set-off or an equity to prevent them ranking in the liquidation. The learned Judge was of opinion that the Master in this respect had been misled, and that the respondents had failed to establish, by any evidence admissible against the appellants, the facts on which to found a claim.

The second ground of appeal was, that, on the assumption that the evidence was admissible and adequately established the facts, the appellants, as assignees of a chose in action, stood in a better position than Benson, and as against the appellants the equity did not exist.

The learned Judge said that he was bound to follow the express ruling of the Court of Appeal in *In re Milan Tramways Co.*, Ex p. Theys (1884), 25 Ch. D. 587, followed as it was in *In re Goy & Co. Limited*, [1900] 2 Ch. 149, and hold that, if due notice was given to the plaintiff company by the assignor of the appellants before the declaration of any dividend and before recovery of the judgment against Benson, and if the assignment from Benson to the appellants was bona fide, no right of set-off and no right to retain the dividend arose; but meantime, and until those questions should be determined, no dividend should be paid to the appellants.

The learned Judge must be understood as deciding no more than the preliminary questions directly raised before the Master, and as leaving open all other issues in regard to the rights of the appellants and respondents.

The appeal should be allowed with costs, the interim report set aside, and the whole matter referred back to the Master.

---

RE SOLICITOR—LENNOX, J., IN CHAMBERS—OCT. 22.

*Solicitor—Taxation of Bill of Costs—Place of Reference—Solicitors Act, sec. 38 (3).*—An appeal by the solicitor from an order of the Master in Chambers, directing delivery and taxation of a bill of costs, in so far as the order provided that the taxation should be before the Senior Taxing Officer in Toronto. LENNOX, J., in a written judgment, said that the reference for taxation should, unless otherwise ordered, be to the proper Taxing Officer for the county in which the solicitor resided: *Solicitors Act, R.S.O. 1914*