

guaranteed loan, and that the President had instructed the accountant so to apply the two sums of \$50,000 paid, but he had omitted to do so. The trial judge gave effect to this objection and dismissed the information of the Crown.

Held, reversing the judgment of the Exchequer Court (6 Ex. C. R. 21), TASCHEREAU and GIROUARD, JJ., dissenting, that as the evidence showed that the President knew what the accountant had done and did not repudiate it, and as the act was for the benefit of the bank, the latter was bound by it; that the act of the Government in immediately returning the specific deposit receipts when the payments were made was a sufficient act of appropriation by the creditor within Art. 1160 C.C. no appropriation at all having been made by the debtor on the hypothesis of error; and if this were not so the bank could not now annul the imputation made by the accountant, unless the government could be restored to the position it would have been in if no imputation at all had been made which was impossible, as the Government would then have had an option which could not now be exercised.

Fitzpatrick, Q.C., and *Newcombe*, Q.C., Deputy Minister of Justice, for appellants. *Hall*, Q.C., and *Hogg*, Q.C., for respondent.

Ont.] KNIGHTS OF MACCABEES v. HILLIKER. [Feb. 22.
Life insurance — Benefit association — Non-payment of assessments — Forfeiture — Waiver — Pleading.

H., a member of a benefit insurance association holding a certificate for \$3,000, died while under suspension for non-payment of two monthly assessments. His widow brought an action for the amount of the certificate alleging that the forfeiture was waived for several reasons, namely, that deceased had no notice of the call for the assessments; that he was entitled to notice that he was in arrears; that he had been illegally suspended; and that the local tent of the order had been suspended during the period covered by the unpaid assessments and therefore payment was impossible. The trial judge refused to non-suit and gave judgment in favour of the widow for the amount claimed, which judgment was affirmed by an equal division of the Court of Appeal.

Held, reversing the judgment of the Court of Appeal, that the waiver not having been pleaded it could not be relied on by the plaintiff as an answer to the plea of non payment and if it could the facts relied on were not answer.

Patterson, for appellants. *Ball*, Q.C., and *Ba'* for respondents.