Maclaren, J.A., in a written judgment, said that it was proved that, when the plaintiffs demanded from the makers of the $4,000 note the $3,000 due by the company, Davis deposited $2,000 in the savings department of the plaintiffs' bank and Ryder deposited $1,000.

It was argued for the plaintiffs, on the authority of Commercial Bank of Australia v. Official Assignee of the Estate of Wilson, [1893] A.C. 181, that the plaintiffs, notwithstanding the deposit of these sums, were still entitled to recover from the defendants the full amount of the company's indebtedness. But the facts of that case were widely different from the facts of that now before the Court.

In the present case, the manager of the plaintiffs' bank strongly disclaimed any agreement whatever between the bank and Davis and Ryder with regard to the deposits made by them, and asserted that, although one of the deposits made by Davis was marked "special," that was an error, and there was nothing special about it. He said that the deposits were ordinary savings bank deposits and tangible evidence that the depositors did not intend to question or dispute their liability, and that there was no agreement whatever between them and the bank save as ordinary depositors. The trial Judge found as a fact, upon the evidence, that these deposits were in reality a payment of the debt of the company, and dismissed the action, upon the authority of the judgment of the Privy Council in Molsons Bank v. Cooper (1898), 26 A.R. 571 (appendix).

The facts of the present case fell within the Molsons Bank case rather than the Australian case; and, if there was any conflict between them, the later one should be followed.

Moreover, the finding of fact of the trial Judge should not be interfered with.

The appeal should be dismissed with costs.

Hodgins, J.A., agreed with Maclaren, J.A.

Ferguson, J.A., agreed in the result, for reasons stated in writing.

Magee, J.A., dissented.

Appeal dismissed with costs; Magee, J.A., *dissenting.*