

There should be judgment for the plaintiff for \$500, with costs on the Supreme Court scale; the defendants must pay the costs of the third party.

BRITTON, J.

JULY 13TH, 1918.

RE WOODSTOCK CONCRETE MACHINERY CO.
LIMITED.

Company—Winding-up—Sale of Lands of Company—Satisfaction of Mortgage—Claim of Guarantors to Balance of Proceeds of Sale—Agreement—Acquiescence—Costs of Liquidation Proceedings—Rights of Liquidator.

An appeal by Brownlee and others, called "the guarantors," from a ruling of J. A. C. Cameron, Official Referee, in a winding-up matter under the Dominion Winding-up Act, R.S.C. 1906 ch. 144.

The appeal was heard in the Weekly Court, Toronto.

Frank Arnoldi, K.C., for the appellants.

W. N. Tilley, K.C., and B. H. L. Symmes, for the liquidator.

BRITTON, J., in a written judgment, said that the guarantors asked to have the ruling of the Referee set aside, and to have it declared that the money received by the liquidator for the sale of the lands of the company, over and above the amount paid to the Imperial Bank of Canada, the mortgagees, and over and above the amount paid for taxes, was the property of the guarantors, who were entitled to be subrogated to the rights of the bank in respect of the mortgage, and further that the liquidator be ordered to pay the money to the guarantors.

Before and on the 7th May, 1915, the company was indebted to the bank in a large sum of money, and on that day a mortgage was given to the bank, reciting that the company was indebted to the bank for various advances and credits. This mortgage contained the following clause: "It is hereby declared that no surety, endorser, or other person entitled to indemnity or contribution from the mortgagor, its successors or assigns, in respect of any sum secured hereby, shall be entitled to the benefit of this security."

On the 30th November, 1916, the bank filed a petition and applied for a winding-up of the company; but the order, although issued, was not at once acted upon in any way that would prevent