

The Elgin Co. had at the credit of their savings bank account when the cheque of 11th August, 1902, was drawn, \$81,070.65, and that was reduced by debiting them in the account with the amount of the cheque to \$28,879.40.

If the debenture is void, it is surely not open to the Atlas Loan Co., while repudiating their liability upon it, to claim credit in the savings bank account for the very money which they, as the result of the transaction, merely transferred from one pocket to the other. I do not think that they can do this, and that the result of their repudiation of liability on the debenture is to render it impossible for them to charge against their indebtedness on the savings bank account the cheque of 11th August, 1902. It is not as if the money was borrowed to be used, to the knowledge of the lender, in making an investment which was ultra vires the borrower. The investment intended to be made and which was made was intra vires the Atlas Co.

For these reasons, the finding of the Master should be reversed, and there should be a reference back, with directions to allow the claim of the Elgin Co. to the extent of the amount of the loan and interest upon it, and with leave to the Elgin Co., if they so desire, to amend the proof by making an alternative claim in respect of the moneys on deposit with the Atlas Co., and the Elgin Co. must, of course, value their security and give credit accordingly.

The costs of the contestation and of the appeal must be paid by the liquidator of the Atlas Co.

MEREDITH, C.J.

JANUARY 7TH, 1905.

TRIAL.

MERCHANTS FIRE INS. CO. v. EQUITY FIRE INS. CO.

*Fire Insurance—Specific Goods—Substituted Goods—Construction of Policy—Termination of Insurance—Notice—Reinsurance—Breach of Warranty—Limitation of Actions—Statutory Condition—Unjust and Unreasonable Variation.*

Action on a policy of insurance issued by defendants, dated 1st April, 1902, reinsuring plaintiffs for one year, on property covered by plaintiffs' policy No. 2958 issued at their