

LOUIS M. BENJAMIN APPELLANT;

AND

S. W. WEINBERG RESPONDENT.

1956
*Mar. 22
*Apr. 24

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC

Bills of Exchange—Fraud shown—Onus on holder in due course—Bills of Exchange Act, R.S.C. 1952, c. 15.

The appellant sued as the holder in due course of a cheque which the respondent had signed in blank and delivered to one H. There were concurrent findings that at the time, if the appellant did not have actual knowledge of the circumstances under which the cheque was being negotiated by H., he showed a wilful disregard of the facts and must have had a suspicion that there was something wrong and refrained from investigating.

Held (affirming the judgment appealed from): That, fraud having been shown regarding the manner in which the respondent was induced to sign and deliver the cheque to H., the appellant has not discharged the onus placed upon him to show that he had taken the bill in good faith and without notice of any defect in the title of the person negotiating it.

APPEAL from the judgment of the Court of Queen's Bench, appeal side (1), affirming the judgment at trial.

C. R. Gross for the appellant.

L. Fitch., Q.C. and R. L. Bercovitch for the respondent.
The judgment of the Court was delivered by:—

LOCKE J.:—This is an appeal from a judgment of the Court of Queen's Bench (Appeal Side) (1), by which the

*PRESENT: Kerwin C.J., Taschereau, Locke, Fauteux and Abbott JJ.

(1) Q.R. [1954] Q.B. 582.

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appeal of the present appellant from the judgment of McKinnon J. dismissing the action was dismissed.

The relevant facts are stated at length in the judgment of the learned trial judge and reviewed in the reasons for judgment delivered by Gagné J. and it is unnecessary to repeat them.

The question to be determined is whether the appellant became the holder in due course of the cheque signed in blank by the respondent and delivered to Hershunov in the circumstances described. It was found as a fact at the trial that at the time, if the appellant did not have actual knowledge of the circumstances under which Hershunov was negotiating the respondent's cheque, he showed a wilful disregard of the facts and must have had a suspicion that there was something wrong and refrained from asking questions or making further enquiries. These findings have been unanimously confirmed by the court to which the appeal was taken.

My consideration of the lengthy evidence in this matter discloses no ground upon which we may properly interfere with these concurrent findings.

I respectfully agree with McKinnon J. that, in circumstances such as are disclosed by the evidence in this case, the test to be applied is that stated by Lord Blackburn in *Jones v. Gordon* (1), and by Lord Herschell in *London Joint Stock Bank v. Simmons* (2). Fraud having been shown regarding the manner in which the respondent was induced to sign and deliver the cheque to Hershunov, the onus was upon the appellant to show that he had taken the bill in good faith and without notice of any defect in the title of the person negotiating it (s. 58(2) *Bills of Exchange Act*; *Tatam v. Haslar* (3)). Upon the facts as found in this case, that onus has not been discharged.

I would dismiss this appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Rudenko & Gross.*

Solicitor for the respondent: *R. L. Bercovitch.*

(1) [1877] 2 A.C. 616 at 629.

(2) [1892] A.C. 201 at 221.

(3) (1889) 23 Q.B.D. 345.