

D. M. SULLIVAN (DEFENDANT).....APPELLANT;

1926

AND

*Oct. 6, 7.

*Dec. 15.

THE HOME BANK OF CANADA }
 (PLAINTIFF) } RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH
 COLUMBIA

Banks and banking—Suspension of payment at head-office—Posterior transactions by local branch—No knowledge of suspension by local officials—Validity.

Transactions carried on in the ordinary course of business by officials of a local branch after a bank had suspended payment at its head-office, but before the officials of the branch have had knowledge of such suspension, are valid.

Judgment of the Court of Appeal ([1926] 3 W.W.R. 305) aff.

APPEAL from the decision of the Court of Appeal for British Columbia (1), affirming the judgment of Gregory J., and maintaining the respondent's action on a cheque.

The facts of the case are fully stated in the judgment now reported.

Geo. F. Henderson K.C. for the appellant.

M. H. Ludwig K.C. for the respondent.

The judgment of the court was delivered by

DUFF J.—The several rights and liabilities arising out of two transactions which took place in Vancouver (of the 17th of August, 1923), are in question.

By that on which the counter-claim is founded, Harris purchased from Sullivan Dominion bearer bonds of the par value of \$17,000, for which Harris gave his cheque on the Vancouver branch of the Home Bank. Of these bonds, Harris deposited in that branch bonds of the par value of \$6,000, which sum was placed to his credit. Against this credit, he drew a cheque for a sum slightly in excess of it, had it certified by the bank, and negotiated it.

*PRESENT:—Anglin C.J.C. and Idington, Duff, Mignault, Newcombe and Rinfret JJ.

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Shortly after Harris received the bank's certification, the Vancouver branch suspended payment, and, Sullivan's bank refusing for this reason to accept cheques on the Home Bank, Sullivan demanded from the Home Bank the return of the bonds he had sold to Harris, and, by his counter-claim, seeks to enforce the demand so advanced.

By the other transaction, Sullivan purchased from Harris Dominion bonds of the par value of \$10,000, for which he gave to Harris his cheque on the Standard Bank of Canada for \$10,657.70, which cheque Harris deposited to the credit of the account of Harris & Co. in the Home Bank, and, through this deposit and others made on the same day, Harris & Co's. account was put in credit to the amount of \$31,496.57; and on the same morning, before the suspension, Harris' cheques were, on the strength of this credit, accepted by the Home Bank and paid, to the amount of \$32,000 odd. Sullivan, on learning of the suspension, stopped payment of his cheque, and the bank, by this action, seeks to enforce payment of it.

The head office of the bank in Toronto had suspended payment some hours before the suspension in Vancouver; and it was contended, in support of the appeal, that by reason of this fact the bank became incapacitated from acquiring a title to the Victory bonds in question or to the cheque sued upon.

As to the first mentioned transaction, the bearer Victory bonds were negotiable instruments which the bank acquired for value, and without notice of any defect in Harris' title. It is plain that the bank is entitled to keep the bonds unless there was such a total incapacity to acquire title to them as to make the delivery of them an absolute nullity. As to the last mentioned transaction, Sullivan retains the consideration for which the cheque was given. There again, unless the bank was totally disabled from acquiring a title, the appellant obviously fails.

Accordingly, the appellant rested his appeal upon the proposition that, by force of the suspension, which went into effect in Toronto before these transactions took place, but without the knowledge of the Vancouver officials (who

learned of it after they had taken place), the bank was by law struck with such incapacity.

It seems sufficient to say that there is no warrant for such a proposition in the statutory provisions upon which the appellant relies. The *Bank Act* (s. 117), provides for the appointment of a curator "forthwith" when the bank suspends payment. The curator is then to have supervision over the affairs of the bank, until the bank resumes business or a liquidator is appointed. There is no suggestion in this section that the corporate capacity of the bank to acquire property or to carry on business ceases to exist. It still exists, but is, subject to the provisions of the Act, to be exercised under the supervision of the curator, whose immediate appointment the section contemplates. As to the situation during the period intervening between the suspension and his appointment, the only pertinent provision appears to be that contained in s. 146, which makes it an offence for any officer of the bank to pay any debt of the bank with knowledge of suspension without assent by the curator or liquidator; a provision which implies no declaration of the bank's incapacity to acquire property when that takes place in the ordinary course of business and through the agency of officers having no knowledge of a suspension.

The appeal should be dismissed with costs.

IDINGTON J.—Having perused and considered the judgment of my brother Duff J. herein in regard to the appeal from the Court of Appeal for British Columbia, I agree with the reasoning therein and the conclusion reached that the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *MacInnes & Arnold*.

Solicitors for the respondent: *Reid, Wallbridge, Gibson & Co.*

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