

1917

*Feb. 16.

*Feb. 19.

JOSEPH R. COLLINGS (PLAINTIFF) APPELLANT;

AND

THE CITY OF CALGARY (DEFEND- }
 ANT) } RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE
 SUPREME COURT OF ALBERTA.

Municipal corporation—Taxes—Payment—Cheque—Bill of exchange.

On a demand for taxes, the following words appear: "All cheques in payment of taxes must be made payable to the City of Calgary and accepted by bank." The appellant delivered to the tax collector of the city respondent an instrument purporting to be an accepted cheque on the Dominion Trust Company in payment of taxes due upon lands belonging to him. Before the presentation of the cheque for payment, the Dominion Trust Company ceased to do business.

The judgment of the Appellate Division of the Supreme Court of Alberta that the appellant's taxes had not been paid was unanimously affirmed.

Per Duff and Brodeur JJ.—The tax collector had no authority to receive in payment of taxes an accepted bill of exchange, and the order on the Dominion Trust Company was not an accepted cheque on a bank.

Per Brodeur J.—The tax collector was not authorized to receive payment of taxes otherwise than by legal tender.

APPEAL from the judgment of the Appellate Division of the Supreme Court of Alberta, (1) reversing the judgment of Simmons J. at the trial, by which the plaintiff's action was maintained with costs.

Alex. Hannah, for the appellant, argued that the City of Calgary had confirmed the acts of its collector and that there was no provision in the respondent's charter forbidding it to accept cheques.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

(1) 10 Alta. L.R. 102.

C. J. Ford, for the respondent, submitted that taxes are payable in lawful money only; and that the instrument given in the present case was not even a cheque accepted by a bank, as the Dominion Trust Company was expressly forbidden by sec. 12, ch. 89, Statutes of Canada, 1912, from engaging in the business of banking.

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THE CHIEF JUSTICE.—Appeal dismissed with costs.

DAVIES J.—I concur in dismissing this appeal.

IDINGTON J.—This appeal must be dismissed with costs.

DUFF J.—I do not find it necessary to pronounce any opinion upon the legal power of the municipality to authorize the treasurer to receive payment of taxes otherwise than in legal tender or bank notes. It is very clear that he had in fact no authority to receive in payment an accepted bill of exchange which was not a cheque on a bank. The order on the Dominion Trust Company was certainly not a cheque either in contemplation of law or according to the common understanding.

The appeal should be dismissed with costs.

ANGLIN J.—I would dismiss this appeal with costs.

BRODEUR J.—I am unable to find that the appellant Collings has duly paid his taxes.

The tax collector had some duties to perform and those duties are defined by the statute and he was not authorized to receive payment of those taxes in other than legal tender. If the notice which had been given to the tax-payer that a cheque in payment of taxes could

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be made, provided accepted by a bank, is legal and proper, I should say that in this case a duly accepted cheque was not presented for payment. It was not accepted by a bank; and if, in order to oblige Collings, the collector has thought advisable to take the document which was presented to him, there is no reason why the city should suffer for the illegal and unauthorized action of its officer.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Hannah, Stirton & Fisher.*

Solicitor for the respondent: *Clinton J. Ford.*
